

<b>Internet Services Contract</b>
<b>US Embassy - Center for Disease Control and Prevention (Kenya)</b>
This document outlines CDC's requirement for the provision of Internet Services and Point to Point Connectivity between multiple sites. It details the level and quality of services expected by CDC that is binding to both CDC and the contracted CONTRACTOR
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<b>June 19, 2012</b>



# Internet Services

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## 1. Introduction

The US Embassy -Centers for Disease Control and Prevention (Kenya) (CDC Kenya) is interested in the consolidation of all its Internet Services and Point to Point Connectivity under a single umbrella contract to cover all its sites. CDC Kenya has sites in Nairobi and Kisumu offices located at the Kenya Medical Research Institute (KEMRI) Complexes at both sites, with a number of field stations.

The CDC establishment has grown rapidly over the years, both in terms of human resources to perform program activities, and material infrastructure to house and conduct the work. Currently, there are approximately 200 employees in Nairobi and Kisumu, including public health advisors, administrative staff, expatriate technical staff and doctoral level scientists variously assisting with fieldwork, laboratory analyses, data management, and administrative support. CDC has a partnership with KEMRI that has over 1500 employees engaged in medical research and public health activities.

A computer network and GIS/GPS capability are well established. The CDC Kenya information and communication technology systems in Nairobi and Kisumu include VSAT links, wide area network links, and common logical architecture and shared services including e-mail, telephony and video-conferencing.

This Request for Proposal combined with a proposed Service Level Agreement is being sent out to Internet Service Providers (ISPs) for the provision of Internet Services and Point to Point Connectivity between multiple sites in Nairobi and Kisumu regions. It details the level and quality of services expected by CDC Kenya that is binding to both CDC and the contracted CONTRACTOR

The terms and conditions of the RFP have been defined below. Some of them are non-negotiable whilst others are for THE CONTRACTOR to define. Please bear in mind that CDC Kenya is looking for **QUALITY** Comprehensive Internet service provision and maintenance and as such the CONTRACTOR will have to undertake to stock up critical spare parts and standby equipment both in Nairobi and Kisumu to ensure prompt response to outages arising from equipment failure.



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## **1.1. Definitions**

The definitions set forth below shall apply to the following terms when used in this contract document, its Attachments and Amendments hereto.

**Service-** Internet connection, Point to Point connection or any other service provided by THE CONTRACTOR at the CDC Kenya sites in Nairobi and Kisumu regions.

**Network outage-** is a situation whereby critical infrastructure provided by THE CONTRACTOR fails and CDC Kenya network cannot access the Internet or communicate between its designated sites via the connections provided by THE CONTRACTOR.

**Outage time-** is the time interval between the incidence of an outage and the restoration of service as recorded by commercially available network monitoring software that have been agreed upon by both parties, less any time excluded in section 2.2 below. CDC Kenya reserves the right to conduct independent tests using open standard network monitoring software.

**Turnaround Time (TAT)** - The time taken for THE CONTRACTOR representative to correct downtime as per the agreed resolution times and proves normal operation to CDC Kenya's satisfaction after notice of downtime has been identified.

**Principal period of service-** is divided into the following two time periods

**Office hours** - is defined as being the hours between 07h00 and 18h00 (GMT +3) Monday to Friday, excluding weekends and public holidays.

**After hours** is defined as being the hours between 18h00 and 07h00 (GMT +3) weekdays, all weekends and public holidays.

**Service request** – a request for modification of existing services or a request for additional services.

**Monthly Service Charge-** the monthly sum due to THE CONTRACTOR as shall be agreed upon between CDC Kenya and THE CONTRACTOR as per this contract.

**Third Party Service Provider** “–Denotes any other THIRD PARTY PARTNER whom THE CONTRACTOR relies on to provide contracted services to CDC Kenya.

**SLA** –refers to the Service Level Agreement included in this Request for Proposal. The term “Contract” and Service Level Agreement may be used interchangeably in this document and shall be construed to have the same meaning as regards the services requested.



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## ***1.2. Scope of the Contract***

This Contract sets forth the terms and conditions under which THE CONTRACTOR agrees to provide and CDC Kenya agrees to accept the provision of Internet Service and Point to Point connection at designated sites as outlined in this document.

- a. This Contract shall become effective on **August 1<sup>st</sup> 2012** hereinafter called the Start Date.
- b. This Contract shall be for a period of 12 months from **August 1<sup>st</sup> 2012** to **July 31<sup>st</sup> 2013**

This contract may be renewed for a subsequent period of 12 months subject to agreement by both CDC Kenya and THE CONTRACTOR.

This Contract shall supersede all previous Internet Services Contracts between CDC Kenya and THE CONTRACTOR for the provision of Internet Services and Point to Point connection at designated sites as outlined in this document.

All notices which require to be given in terms of this Agreement shall be so given in writing at the last known address.



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## 2. Internet Service and Point to Point Connectivity Service

### 2.1. Proposed Services

The table below details the services already contracted or proposed to be contracted by CDC Kenya from THE CONTRACTOR during this contract period.

- THE CONTRACTOR must clearly detail how each of the requirements below will be achieved in their technical proposal in the sequence outlined below for clarity and ease of reference.
- Each connection will be split in half and supported by two independent service providers for high availability.
- The CONTRACTOR will configure the two links to provide the consolidated capacity requested in the table 2.1 below with automatic **load balancing** and **failover**. The ideal situation would be to use a single router to connect the two links but THE CONTRACTOR is at liberty to provide their preferred technical proposal
- The CONTRACTOR should clearly indicate and cost for all the equipment that will be used to terminate the two links.

**Table 2.1- Proposed Internet and Point to Point Links**

Item	Location	Bandwidth	Proposed Equipment	One-time Cost (USD)	Monthly Recurrent Cost (USD)	Type/Remarks
1	Nairobi-HQ to Internet	4096 (4MB)				Internet link
2	Nairobi-HQ to Nairobi-US Embassy	6144 (6MB)				Point to Point link
3	Nairobi-HQ to Nairobi-Warehouse	1024 (1MB)				Point to Point link
4	Nairobi-HQ to Kisumu-CRC	2048 (2MB)				Point to Point link
5	Nairobi-US Embassy to Kisumu-Kisian	2048 (2MB)				Point to Point link
6	Nairobi-HQ to Internet	2048 (2MB)				Internet link via Wimax
	<b>TOTAL</b>					



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## Note:

**Nairobi-HQ:** Refers to the CDC Nairobi office at the KEMRI Campus, Nairobi, Off Mbagathi Road

**Nairobi-US Embassy:** Refers to the CDC Office in the US Embassy compound in Gigiri.

**Nairobi-Warehouse:** Refers to the CDC Warehouse in Embakasi, Nairobi, opposite City Cabanas

**Kisumu-CRC:** Refers to the CDC office KEMRI campus at the Clinical Research Center, Nyanza Provincial Hospital, Kisumu town.

**Kisumu-Kisian:** Refers to the CDC office KEMRI campus at the Field Station, Kisian, Kisumu (approximately 12 kilometers from Kisumu town).

## **2.2. Establishment of Services**

- a. Subject to the terms and conditions herein, THE CONTRACTOR shall provide Internet Services and Point to Point connection between designated sites at the CDC Kenya offices in Nairobi and Kisumu regions.
- b. THE CONTRACTOR is expected to conduct a site survey of all the proposed CDC Kenya connection sites to ascertain and prepare the items below.
  - i. The existing connections
  - ii. The existing equipment and identify what may be used in the establishment of services
  - iii. Additional equipment required to successfully deliver the proposed services
  - iv. Provide a comprehensive and detailed project implementation plan for the establishment of the proposed services.
  - v. The bids received must include detailed network diagrams outlining THE CONTRACTOR's proposed solution to achieve the establishment of the proposed services.
  - vi. THE CONTRACTOR should provide all the information requested in Table 2.1 above in addition to any other information THE CONTRACTOR considers relevant.
  - vii. The contractor must include at least two reference sites with equivalent scope of services requested

**IMPORTANT NOTE:** *CDC Kenya will consider requests by THE CONTRACTOR to procure additional equipment or services arising as a result of not conducting a proper site survey. Any additional equipment required will be procured and installed entirely at the expense of THE CONTRACTOR.*



### c. Criteria for Selecting a CONTRACTOR

The successful CONTRACTOR will be the one who successfully demonstrates (on a weighted basis):

- i. High degree of technical capability and understanding to cover both installation and post-installation service.
  - ii. Inclusion of clear and detailed diagrams and list of equipment proposing an open, upgradable and expandable system.
  - iii. A clear and detailed project plan demonstrating the ability to complete the work within 2 months.
  - iv. A clear services and support framework with call logging, tracking, escalation and closure matrix.
  - v. A good technical and services record with reference sites
  - vi. An offer of an appropriate cost-effective open systems solution.
- e. On completion of the implementation of the services, THE CONTRACTOR will provide CDC Kenya with a comprehensive document that includes
- i. A detailed diagram of all the connections and equipment used. The equipment will be clearly labeled and include all equipment models, IP addresses, port numbers etc.
  - ii. Details of all the configurations entered into the equipment providing the connection services.
  - iii. A project completion certificate that will be signed by the technical teams of CDC Kenya and THE CONTRACTOR acknowledging the successful implementation of the technical services.
- f. THE CONTRACTOR is expected to achieve the availability of the service level as shall be agreed upon in this contract.
- g. In consideration for the said services CDC Kenya shall pay the Monthly Service Charge in relation to each contracted service provided as specified in this document.
- h. CDC Kenya may, upon thirty (30) days prior written notice to THE CONTRACTOR, request an extension to the Principal Period of Maintenance. CDC Kenya shall pay THE CONTRACTOR additional charges as agreed between THE CONTRACTOR and CDC Kenya.
- i. The monthly service charge does not cover the cost of the following items that shall be borne by CDC Kenya:-
- i. Changes or alterations in specifications made at CDC Kenya's request.
  - ii. Furnishing of equipment, accessories or supplies that are not part of the original specifications as detailed in this document.

THE CONTRACTOR will, at its expense, conduct an inspection with the permission of CDC Kenya and after that submit a written report to CDC Kenya containing specifications recommended by THE CONTRACTOR relating to air conditioning, air particle content and proper condition of electrical supply, to ensure the proper operation of THE CONTRACTOR equipment, and of



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changes to site specifications required from time to time by changes in manufacturers specifications.

CDC Kenya agrees to effect such changes at its expense within 30 days or when possible after that. CDC Kenya will provide a clean electrical supply line for connection of THE CONTRACTOR equipment. THE CONTRACTOR personnel will ensure that all THE CONTRACTOR equipment is connected to this clean line. Failure to observe this will absolve CDC Kenya of all damages arising out of this and THE CONTRACTOR will replace the equipment or parts, damaged due to power fluctuations on the unclean line, at THE CONTRACTOR'S cost.

By written Contract between the parties, additional Internet Services or Point to Point connection may be added to or removed from the Schedule of services maintained in this contract, subject to such adjustments as to charges as may be agreed between the parties.

The CONTRACTOR agrees to make available a suitably qualified engineer and spares in Kenya to support the maintenance of THE CONTRACTOR equipment and provision of Internet Services and Point to Point connection during the term of the contract.

In the event that the CONTRACTOR fails to provide satisfactory level of Internet Service and Point to Point connection CDC Kenya as agreed in this contract, CDC Kenya shall have the option of terminating the CONTRACTOR's service obligations forthwith.



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## **2.3. Service Deliverables**

THE CONTRACTOR shall provide a continuous and uninterrupted Service for all contracted services with a monthly network availability target of at least 97.0% subject the agreement below.

The determination as to whether the Minimum Service Availability Level has been achieved will involve an assessment of the outage time per calendar month.

CDC Kenya and THE CONTRACTOR agree that:

In assessing outage time, the following times will be excluded for the purposes of penalty calculations:

- a. All network outage time that is due to a planned outage in respect of which CDC Kenya has received prior notice, for purposes such as maintenance and/or as a result of Network re-design/re-configuration activities.
  - i. Any outage time in excess of the agreed outage time will not be excluded.
  - ii. THE CONTRACTOR shall give at least 24 hours' notice (preferably more when possible) in writing via email or letter to the CDC Kenya designated customer service liaison prior to such maintenance being performed. CDC Kenya expects that planned outages will generally be scheduled at night or during weekends to insure minimum disruption of services.
  - iii. In the event that emergency maintenance is deemed necessary due to unforeseen circumstances, THE CONTRACTOR will inform CDC Kenya as soon as possible who reserve the right to include or exclude the downtime from the network outage time.
  - iv. Such emergency maintenance shall not be excluded from the calculations if it is established to be resultant from a direct error from THE CONTRACTOR.
  - v. If the maintenance only affects the Service provided to CDC Kenya and no other customer for similar services offered by THE CONTRACTOR, CDC Kenya can request that the planned outage be delayed, provided that it approves such outage taking place within a period not exceeding 5 days after the time originally proposed by THE CONTRACTOR.
- b. Any outage which is caused directly by an act or an omission of CDC Kenya
- c. Any time delay in accessing THE CONTRACTOR on-site equipment that is introduced or resulting from access limitations (physical, electronic, remote) or procedures will be excluded in penalty calculations.
- d. Any outage caused by a force majeure event as defined in the Service Contract.
- e. THE CONTRACTOR will be responsible to ensure solid service level agreements with other third party service providers on whom they may depend that shield CDC Kenya from network outages. In the event of an outage as a result of a fault in the infrastructure of a third party CONTRACTOR on whom THE CONTRACTOR depends, THE



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CONTRACTOR will inform CDC Kenya as soon as possible who reserve the right to include or exclude the downtime from the penalty calculations.

- f. Any outage caused, as a result of misuse and / or abuse of the Service by CDC Kenya, and subsequent actions taken by THE CONTRACTOR in order to protect either THE CONTRACTOR network or CDC Kenya's from a denial of service attack.
- g. Any outage as a result of failure or breakdown of third party computer equipment or software owned by the CDC Kenya, which will be guaranteed by CDC Kenya specific CONTRACTORS and shall not be the responsibility of THE CONTRACTOR.
- h. Any change in or impact of abnormal environmental conditions, such as but not limited to:
  - i. Spurious Radio Frequency or Magnetic Radio Interference or Adjacent Satellite Interference
  - ii. Sun Outages
  - iii. Rain fade, Meteor Showers
  - iv. Intermittent or a constant change to line of sight

For practical purposes, all availability level calculations will assume a 30-day month irrespective of the actual number of days in a particular calendar month. All calculations will therefore be based on a total number of minutes in the month of:

$$30 \times 24 = 43,200 \text{ minutes}$$

The service availability with respect to a particular month will be calculated according to the formula below.

$$SA \text{ Level } \% = \frac{43200 - TNO}{43200} * 100$$

Where:

TNO= Total Network Outage time expressed in minutes for the month excluding outages as outlined above.

SA Level = Service Availability level



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## 2.4. Penalties

CDC Kenya will be entitled to claim a monthly penalty as determined in accordance with the provisions outlined in this section when the Service availability level over a calendar month is below the Minimum Service Availability Level. Such claim must be made within 30 days after the end of the month in which the penalty situation arose. Any penalty not claimed by the CDC Kenya within 30 days shall be forfeited by the CDC Kenya

Accumulation of any applicable penalties will not be carried over from one month to the next.

The following penalties will be payable by THE CONTRACTOR with respects to and as a result of network outages on any given calendar month as calculated in accordance section 2.2

	Availability	Service Credits
a)	Above 97.0%	0%
b)	95% to 97%	5%
c)	90% to 95%	10%
d)	80% to 90%	20%
e)	50% to 80%	35%
f)	<50%	50%

The maximum accumulative penalty payable is 50% of the monthly service charge billed to CDC Kenya on any particular month, without prejudice to CDC Kenya's other rights under the agreement or in law or in terms of the agreement.

For avoidance of doubt, if the accumulated penalty equals more than 50% of the monthly service charge, the total penalty shall be 50% of the Service Charge.

Penalties will be paid in the form of a credit note with reference to an invoice raised by THE CONTRACTOR for the monthly service charge for particular calendar month in question.



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## 2.5. Response to Fix Time

### 2.5.1. Hours of Service

CDC Kenya operates beyond the normal working hours in Kenya of between 8.00 am and 5.00 pm due its connection with other CDC sites spread across the globe. It is normal that staff would be working well into the night or starting very early in the morning. For this reason, CDC Kenya has divided the principal period of service as detailed below.

**Principal period of service-** is divided into the following two time periods

**Office hours** - “is defined as being the hours between 07h00 and 18h00 (GMT +3) Monday to Friday, excluding weekends and public holidays”.

**After hours** “is defined as being the hours between 18h00 and 07h00 (GMT +3) weekdays, all weekends and public holidays”.

CDC Kenya expects THE CONTRACTOR to put in place a framework that will provide support covering the two time periods outlined above. CDC Kenya acknowledges that it may not be possible to provide the same level of support during the two different time periods owing to the normal operating hours of business in Kenya but expects excellent and prompt support during “**office hours**” and reasonable support during “**after hours**”.

THE CONTRACTOR is expected to pro-actively monitor the service on a 24 hours per day, 7 days per week, 365 days per year basis. THE CONTRACTOR will communicate any outages noticed to the CDC Kenya customer service liaison via phone on **0706172200** or email to [help@ke.cdc.gov](mailto:help@ke.cdc.gov) within the time periods specified in the table below.

Specific Response and Fix time schedules for site support are detailed in the table below.

Principal Period of Service	Outage Notification	Time to establish root cause of outage	Time to Fix
Office Hours	30mins	-1hr for sites within 50k radius of Nairobi and Kisumu offices	- Within 4 hours from start of outage
After Hours	2 hours	- within 5hrs for sites within 50k radius of Nairobi and Kisumu Offices	- Within 8 hours from start of outage

#### IMPORTANT NOTE:

***THE CONTRACTOR is expected to advise CDC Kenya of all costs that will ensure the level of support requested above is achieved throughout the contract period.***



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## ***2.6. Call Logging and Management Procedure***

CDC Kenya expects THE CONTRACTOR to provide a clear call logging process for capturing, tracking and resolving all outages. The expectation is that THE CONTRACTOR will proactively monitor all services contracted, create a call ticket when outages are noticed and notify CDC Kenya within the agreed times.

However, in the event that CDC Kenya notices an outage, CDC Kenya will use the laid down procedure to log a call. This will be via:

- a. A helpdesk system web portal or
- b. A phone call to the designated customer service center or
- c. Email to the designated customer service center.

A unique **call ticket** will be created and **notification sent** to CDC Kenya for purposes of call tracking.

CDC Kenya expects THE CONTRACTOR to immediately assume ownership of the call once logged via the established process and provide regular feedback during the problem resolution of the call. CDC Kenya expects that the feedback will occur regularly within a period not exceeding 1.5 hours cycles.

These would be regular alerts to the CDC Kenya customer service liaison via phone or email so that the internal customers remain well informed of the progress towards problem resolution.

THE CONTRACTOR will provide a clear escalation matrix for all logged calls in the event that calls have not been resolved within the set times or CDC Kenya is not satisfied with the manner in which the call has been resolved.

CDC Kenya expects to use the call escalation process as a **last resort** and expects THE CONTRACTOR to lay emphasis on having processes that minimize the need for call escalation for logged calls.

THE CONTRACTOR will identify suitable customer service contacts who will act as the liaison between THE CONTRACTOR and CDC Kenya for all logged calls or other customer service related issues.



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## ***2.7. THE CONTRACTOR Responsibilities***

THE CONTRACTOR shall

- a. Advise CDC Kenya of all expected physical and operational conditions that ensures smooth operations of all equipment installed at CDC Kenya's premises by THE CONTRACTOR prior to their installation.
- b. Ensure the necessary facilities are in place in all THE CONTRACTOR's Points of Presence and hosting facilities to minimize downtime of the customer's service:
- c. Not be required to configure the CDC Kenya's local network environment and/or any applications associated with that network not specified in this agreement,
- d. Inspect the equipment on request by accessing CDC Kenya's premises at all reasonable times,
- e. Provide secure facilities and controlled access thereto (where applicable).
- f. Provide the agreed upon services at the speeds specified.
- g. Provide the support services as per agreed service
- h. Adhere to the laid out call logging, tracking and resolution procedure.
- i. Adhere to the escalation procedures.
- j. Install, configure and maintain all contractually agreed upon hardware and software.
- k. Liaise with Third Party Service providers on the CDC Kenya's behalf where the service has been interrupted as a direct result of a failure in the Third Party Service provider infrastructure
- l. Replace faulty equipment that CDC Kenya has leased from THE CONTRACTOR.
- m. Obtain approval for all work outside of scope of services specific to CDC Kenya.
- n. Ensure proper maintenance of THE CONTRACTOR equipment installed at CDC Kenya's premises according to the manufacturer's recommendations to minimize on chances of failure.
- o. Hold adequate stocks of spare parts for critical equipment that guarantees maximum availability of services contracted from THE CONTRACTOR by CDC Kenya





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## ***2.8. CDC Kenya Responsibilities***

CDC Kenya shall:

- a. Approve all work outside of scope specific to CDC Kenya to be completed by THE CONTRACTOR prior to this work commencing;
- b. Accept THE CONTRACTOR's prevailing time and reasonable material rates for any service rendered by THE CONTRACTOR outside the scope of the contract between THE CONTRACTOR and CDC Kenya.
- c. Allow THE CONTRACTOR physical, remote or electronic access to THE CONTRACTOR equipment upon reasonable notice, if equipment is leased from and managed by THE CONTRACTOR.
- d. Take the relevant precautions necessary to protect the equipment from loss or damage and for the safety of any leased equipment and the cost of repair of any damage caused to said equipment due to faults resulting from non-compliance of THE CONTRACTOR's Acceptable Use Policy provided by THE CONTRACTOR, while the equipment is in the possession of CDC Kenya.

## ***2.9. Service Performance Evaluation***

THE CONTRACTOR will provide a graph of bandwidth utilization and availability of the service to which the customer can access via a secure web site with customer specific logon credentials.

CDC Kenya expects that THE CONTRACTOR will arrange quarterly service review meetings with CDC Kenya customer service liaison and other representatives to evaluate the performance of the contracted services during the quarter in question with a view to improving on areas that may be of concern to both parties.

## **3. PAYMENT TERMS**

Monthly Service Charges are payable monthly in arrears upon receipt of invoice, and all other payments due in terms of the Internet Services Contract shall be payable within 30 days of receipt of invoice.

The charges provided for herein will include all taxes and duties howsoever designated and whether levied or based upon such charges and the Internet Services Contract

In the event THE CONTRACTOR does not meet the minimum agreed level of service, reimbursement will be by way of a credit note issued by the CONTRACTOR against an invoice raised by THE CONTRACTOR for services that have been rendered during the month in question.



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## 4. MAINTENANCE FEE

The Total value of the contract is < **KES Insert Amount Here** > (Inclusive 16% VAT as applicable) for a period of 12 Months.

THE CONTRACTOR will charge CDC Kenya a Monthly Charge of < **KES Insert Amount Here** > to provide the contracted services as detailed in this contract.

The Monthly Maintenance Charge shall be fixed for the duration of the contract and may only be revised upon the agreement of both parties during the period of the contract.

## 5. TERMINATION

The Contract will be terminated automatically at the end of the contract period.

This Contract may be terminated in its entirety:-

- a. By either party in the event that the other party commits or permits a breach of any term of this Contract and fails to remedy such breach within 30 days of receiving a request in writing from the other party to remedy such breach; or
- b. By either party forthwith on giving notice in writing to the other if the other party, shall have a receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a court shall make an order to that effect or if the other party shall enter into any composition or arrangement with creditors or shall become insolvent.
- c. By CDC Kenya at any time by giving THE CONTRACTOR two calendar months prior written notice.
- d. By THE CONTRACTOR at any time by giving CDC Kenya two calendar months prior written notice.
- e. By CDC Kenya at 1 months' notice should THE CONTRACTOR fail to meet the minimum level of service as specified in section 2 of this contract over a two consecutive months or more than five times during the duration of the contract.

Any termination of this Contract in whole or in part howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.



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## 6. CONFIDENTIALITY

THE CONTRACTOR acknowledges the confidential nature of any and all information that may be revealed to, or otherwise come into the possession of THE CONTRACTOR, its employees, agents or sub-contractors in any manner directly or indirectly arising from the conclusion or performance of this service maintenance contract which relate specifically to CDC Kenya's business.

THE CONTRACTOR shall not divulge such information to any person nor allow such information to be communicated among its employees, agents or sub-contractors save to the extent that is necessary for the performance of this Contract, without CDC Kenya's prior written consent. THE CONTRACTOR shall obtain from any employee, agent or sub-contractor to whom any such information is to be disclosed or who may in any manner obtain access to such information, an appropriate undertaking in terms no less binding upon such person as the terms of this clause.

The obligations of THE CONTRACTOR in terms of this clause shall survive any termination of this Contract and any termination of the relationship between THE CONTRACTOR and its employee, agent or sub-contractor. THE CONTRACTOR further indemnifies and holds harmless CDC Kenya against any claim that may be made against CDC Kenya arising out of or connected directly or indirectly with any breach of the terms of this clause by THE CONTRACTOR, its employee, agent or sub-contractor.

CDC Kenya shall not divulge any of THE CONTRACTOR'S sensitive information such as pricing to any person nor allow such information to be communicated among its employees.

## 7. NOTICE

Any notice required or allowed to be given to CDC Kenya or THE CONTRACTOR under this Contract, shall be deemed to have been validly given if:

- a. Served personally upon acknowledgement of delivery or
- b. If received by the recipient through registered delivery upon acknowledgement of delivery, or
- c. If sent by email and is acknowledged, or
- d. If sent by registered post seven days after posting, or
- e. If sent by facsimile transmission upon receipt of written confirmation of good receipt of the transmission.

Designated recipients shall be the **Deputy Director** for CDC Kenya and the **Managing Director** in the case of THE CONTRACTOR, unless either party shall nominate an alternative Designated Recipient and notify the other in writing accordingly.



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## **8. SUCCESSORS AND ASSIGNS**

Neither THE CONTRACTOR nor CDC Kenya shall be entitled to assign the benefit of this Contract or to delegate all or any of its obligations hereunder except with the prior written consent of the other party.

## **9. GOVERNING LAW**

This Contract shall be governed by and construed and interpreted in accordance with the laws of Kenya.

## **10. WAIVER**

The failure of either of the parties to insist upon strict performance of any of the provisions of this Contract shall not be construed as the waiver of any subsequent default of a similar nature.

## **11. HEADINGS**

The Clause headings are inserted for convenience only and shall not affect the construction or interpretation of this Contract.

## **12. SEVERABILITY**

If any provision of this Contract is held to be unenforceable, all other provisions will nevertheless continue in full force and effect.

## **13. EXCUSABLE DELAY (FORCE MAJEURE)**

CDC Kenya shall not be liable to THE CONTRACTOR, nor THE CONTRACTOR to CDC Kenya for any loss or damage that may be suffered by CDC Kenya or THE CONTRACTOR as a direct or indirect result of THE CONTRACTOR or CDC Kenya being delayed, prevented or hindered in the performance of circumstance beyond its control.

Force Majeure circumstances shall be deemed to include but not be limited to war, riot, usurped power, civil commotion, fire, industrial dispute, strikes, Acts of God or other circumstances beyond the reasonable control of THE CONTRACTOR or CDC Kenya.

If the CONTRACTOR or CDC Kenya is (or is likely to be) prevented from or delayed in performing any of its obligations under the Contract by Force Majeure it shall notify the other parties of the circumstances constituting Force Majeure and of the obligations, performances of which are thereby prevented or delayed and the delivery program shall be extended accordingly by mutual agreement.



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The non-availability of materials and /or components shall not excuse the CONTRACTOR from its obligations except where they are delayed due to Force Majeure circumstances.

Any waiver or extension of the repair period granted under this Article shall not be deemed a waiver or extension of time in respect of remaining obligations of either party.

Should a state of Force Majeure persist for 2 (two) months, the CONTRACTOR and CDC Kenya shall forthwith consult together and agree the appropriate action to be taken.

### **14. ENTIRE CONTRACT**

The parties agree that this Contract and its attachments and schedules constitute the complete and exclusive statement of the terms and conditions between CDC Kenya and THE CONTRACTOR covering the performance of THE CONTRACTOR's maintenance obligations hereunder and cannot be altered, amended or modified except in writing executed by an authorized representative of each party.

No variation of this Contract shall be binding on either party unless such variation is incorporated in a revised schedule to this Contract and signed by the duly appointed representatives of both parties.

### **15. ARBITRATION**

Any dispute between the parties arising from or concerning this Contract shall be referred to arbitration in Kenya. In the event that the parties are unable to agree on the appointment of an arbitrator, either party may request the Chairman for the time being of the Law Society of Kenya to appoint an arbitrator in respect of any dispute. The arbitrator shall enjoy the widest discretion to determine the dispute in a fair, expeditious and economical matter.

### **16. LIMITATION OF LIABILITY**

Neither party shall be liable to the other for any indirect or consequential damages or loss whether or not this was contemplated by the parties and even if either party has been advised of the possibility of such damage or loss.

The liability of either party to the other for breach of such terms of the service maintenance contract is limited to damages only and the level of such damages shall not exceed the annual value of this contract for any one incident or series of related incidents.



# Internet Services

Center for Disease Control and Prevention

## 17. ACCEPTANCE

<b>ACCEPTANCE BY:</b>  <b>US EMBASSY- CENTERS FOR DISEASE CONTROL AND PREVENTION, KENYA</b>	<b>ACCEPTANCE BY:</b>  <b>THE CONTRACTOR</b>
<b>NAME:</b>  <b>DESIGNATION:</b>  <b>DATE:</b>  <b>SIGNATURE:</b>  <b>STAMP:</b>	<b>NAME:</b>  <b>DESIGNATION:</b>  <b>DATE:</b>  <b>SIGNATURE:</b>  <b>STAMP:</b>